



From time to time, the top-notch legal practitioners at the firm Crowell & Moring publish “Government Contracts Bullet Points” to bring issues of interest to the attention of clients and potential clients. We recently received a Bullet Point publication entitled “[Resolving Old Audit Issues](#)” that caught our eye. The Crowell & Moring publication reported that DCAA and DCMA had announced a joint initiative to “disposition’ approximately 400 ‘reportable audits’ and 300 Form 1s that are awaiting ACO action.” They provided a link to the joint DCAA/DCMA announcement, and we [do the same](#) for you.

The purpose of the initiative is to “aggressively target contractual opportunities to recover taxpayer dollars by dispositioning reportable audits, suspended/disallowed costs, cost accounting practice changes, and other cost allowability and allocability issues” so as to enable “the Department and contractors to move forward and focus on current contracting challenges.” The memo states that there is at least \$295 million worth of actions currently “awaiting the Administrative Contracting Officer’s (ACOs) disposition.”

The memo outlines the resolution process as follows:

... each agency assumes its own roles and responsibilities. DCMA will identify and prioritize issues needed for disposition by contractor and establish milestones in consultation with

## DCAA/DCMA Team-Up to Collect Contractors' Cash

Written by Nick Sanders

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DCAA. ACOs will assess each issue assigned and request DCAA assistance if additional accounting and financial advice is needed. In addition, ACOs will make decisions in consideration of the DCAA audit report, additional DCAA accounting and financial advice, and any other pertinent information available to them.

If you look closely at the resolution process, and the roles and responsibilities, you'll see that *D CMA has all the actions*

. Moreover, you'll see that DCMA has to make its dispositions "in consideration of the DCAA audit report"—which seems very much like direction to the ACOs to "accept the DCAA audit report as if it had merit". Well, after nearly three years of GAO and DOD IG criticism of the quality of DCAA audit reports, we don't expect that guidance to result in many fair, reasonable and/or correct ACO decisions.

Further, it seems to us that *there is a reason* those issues haven't been resolved before now. We think it's because they are complex matters involving disputes—or potential disputes—between the three parties (DCAA, DCMA, and contractor). So instead of collecting cash, the issues are likely to be pushed into litigation. Which is a fine thing if you're an attorney or expert witness, but not so fine if you were hoping to resolve the issues through the contract administration process.

As the attorneys at Crowell & Moring wrote—

Based on our experience, many of these unresolved audits and Form 1s are likely to raise issues that the ACO and the DCMA lawyers recognize to be without merit, but that the ACO has been unwilling to close because the ACO cannot or will not try to obtain approval to reject the DCAA position by going through the DCMA Board of Review process, so this initiative is likely to result either in the issuance of a large number of non-meritorious final decisions or politically dangerous decisions to overrule the DCAA audit position -- and bad final decisions may be more likely as a practical matter than disagreeing publicly with the auditors.

We completely agree. This Cost Recovery Initiative is Good News for DCAA, because the agency will look like it is saving the taxpayers money. And the Initiative is Good News for DCMA, because the agency will look like it is taking prompt action based on DCAA audit recommendations. And the Initiative is Good News for the DOD, because it will look like the two oversight organizations are cooperating and not locked in a "dysfunctional" relationship. And, as noted above, the Initiative is likely to prove to be a Good Thing for government contracts

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attorneys (such as those at Crowell & Moring).

But we predict it will be Bad News for DOD's contractors, whose counter-factual arguments and red-faced finger-pointing at the inept DCAA audits will very likely avail them nothing—and they will be forced to either concede or litigate.